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10 UNITED STATES DISTRICT  
11 FOR THE EASTERN DISTRICT OF WASHINGTON

12 UNITED STATES OF AMERICA,

13 Plaintiff,

14 v.

15 EDWARD CHARLES ROBINSON, JR..

16 Defendant.

Case No.: 1:20-CR-02026-SAB-1

United States' Motion for  
Involuntary Psychiatric Medication  
to Restore Defendant's  
Competency

HEARING:  
April 11, 2023  
1:30pm

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18  
19 The United States of America, by and through United States Attorney Vanessa  
20 R. Waldref and Assistant United States Attorneys Tom Hanlon and Richard Barker,  
21 hereby moves for the involuntary administration of psychiatric medication to restore  
22 Defendant's competency pursuant to *Sell v. United States*, 59 U.S. 166 (2003).

23 **BACKGROUND**

24 On July 21, 2020, Defendant was indicated on two counts of First Degree  
25 Murder in violation of 18 U.S.C. §§ 1111, 1153 and one count of Assault with a  
26 Dangerous Weapon in violation of 18 U.S.C. § 113(a)(3), 1153. Defendant stabbed  
27 and killed two family members with a knife; a third family member was assaulted  
28

1 during the unprovoked attack. Both murders and the assault were captured on video.  
2 Defendant was arrested on the date of the offense and has remained in custody since  
3 that time. *See* ECF No. 13.

4 Subsequent to his arrest, the Defense moved for a determination of  
5 Defendant's competency. ECF No. 31. While the Defense's expert, Dr. Erin  
6 Baldwin, initially determined Defendant was competent to stand trial, in a  
7 subsequent report, she determined that he was no longer competent. *Id.* The United  
8 States sought an independent evaluation by Dr. Cynthia A. Low, which concluded  
9 Defendant was not currently competent based on a diagnosis of Delusional Disorder,  
10 Persecutory type. Ex. A. Defendant was then referred to FMC Butner, where he has  
11 undergone further evaluation and competency restoration under the supervision of  
12 Dr. Kristina P. Lloyd. *See* Ex. B-C. Dr. Lloyd agrees that Defendant suffers from a  
13 delusional disorder and that he currently is not competent to stand trial. *Id.* Dr. Lloyd  
14 further reported that "based upon the data that most individuals with chronic  
15 psychotic disorders have some degree of improvement in the symptoms of their  
16 illness, . . . a substantial probability exists that Mr. Robinson's competency to stand  
17 trial can be restored with appropriate treatment with antipsychotic medicine." *See*  
18 Ex. C.

19 In a proposed treatment plan, which is dated February 14, 2023, Dr. Charles  
20 A. Cloutier, M.D., a Staff Psychiatrist at FMC Butner, reported that Defendant's  
21 diagnosis "places him in a population of patients that is very likely to respond to  
22 antipsychotic medication and reach competency over 70-80% of the time with  
23 antipsychotic medication." Ex. D (Proposed Treatment Plan). The treatment plan,  
24 which is addressed in further detail herein, proposes a four to eight month regimen,  
25 with medications to include risperidone and haloperidol. *Id.* 4. According to the  
26 treatment plan, Dr. Cloutier and his team at FMC Butner will "prescribe medication  
27 at the lowest effective dose necessary to safely treat Mr. Robinson's mental illness,  
28

1 improve functioning, and restore competency.” *Id.* at 5. As part of the proposed  
 2 treatment plan, Dr. Cloutier will work to mitigate any potential side-effects and risks.  
 3 *Id.*

#### 4 **ARGUMENT**

5 *Sell v. United States* addresses the involuntary administration of medication  
 6 to non-dangerous incompetent pretrial detainees.<sup>1</sup> 539 U.S. 166 (2003). In *Sell*, the  
 7 Supreme Court held that before a district court may authorize the involuntary  
 8 administration of antipsychotic medication for the purpose of rendering a defendant  
 9 competent to stand trial, the government must show the following:

- 10 1. Important government interests are at stake;
- 11 2. Involuntary medication is substantially likely to render the defendant
- 12 competent to stand trial, and substantially unlikely to have side effects
- 13 that will interfere significantly with the defendant’s ability to assist
- 14 counsel at trial;
- 15 3. Involuntary medication is necessary to further the government’s
- 16 interests, and less intrusive means are unlikely to achieve substantially
- 17 the same results; and
- 18 4. The administration of antipsychotics is medically appropriate.

19 *Id.* at 180-81.

20 The *Sell* factors do not represent a balancing test. It is a set of independent  
 21 requirements, each of which must be found to be true before the forcible  
 22 administration of psychotropic drugs may be considered constitutionally  
 23 permissible. *United States v. Ruiz-Gaxiola*, 623 F.3d 684, 691 (9th Cir. 2010). The

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24 <sup>1</sup> Personnel at FMC Butner has indicated that Defendant does not “currently pose[] a  
 25 substantial risk of dangerousness in the current conditions of his confinement at FMC Butner.” Ex.  
 26 B at 21. The United States respectfully submits that in light of Defendant’s offense conduct in this  
 27 case and his criminal history, Defendant continues to pose a significant danger, especially if he  
 28 were not in a controlled environment such as FMC Butner or a similar facility.

1 Ninth Circuit has held that the government has the burden of establishing the facts  
 2 necessary to allow it to prevail as to each *Sell* factor by clear and convincing  
 3 evidence. *United States v. Ruiz-Gaxiola*, 623 F.3d 684, 692 (9th Cir. 2010).

4 **1. Important governmental interests are at stake.**

5 For there to be important governmental interests at stake, the crime charged  
 6 must be serious and the government must have an important interest in bringing the  
 7 accused to trial. *Sell*, 539 U.S. at 180. Here, Defendant’s crimes are extremely  
 8 serious, and the governmental interest is equally compelling.

9 a. Defendant’s crimes are serious.

10 Defendant cannot seriously contest that his charges – two counts of First-  
 11 Degree Murder and one count of Assault with a Dangerous Weapon – are not serious.  
 12 With respect to the seriousness of a crime, the Ninth Circuit has ruled that “the likely  
 13 guideline range is the appropriate starting point for the analysis.” *United States v.*  
 14 *Hernandez-Vasquez*, 513 F.3d 908, 919 (9th Cir. 2008).<sup>2</sup> Other circuits have  
 15 similarly explained that “serious” crimes are those that have a right to a jury trial and  
 16 that “it is appropriate to focus on the maximum penalty authorized by statute in  
 17 determining if a crime is ‘serious’ for involuntary medication purposes.” *United*  
 18 *States v. Evans*, 404 F.3d 227, 237 (4th Cir. 2005); *United States v. Green*, 532 F.3d  
 19 538, 548 (6th Cir. 2008) (adopting the approach used in *United States v Evans* that  
 20 focuses on the statutory maximum penalty).  
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23 <sup>2</sup> The Ninth Circuit has held that even violations of 18 U.S.C. § 1326 can be serious for  
 24 purposes of the Court’s analysis under *Sell*. See, e.g., *United States v. Hernandez-Vasquez*, 513  
 25 F.3d 908, 919 (9th Cir. 2008) (holding that at least under some circumstances, a violation of §  
 26 1326 may constitute a “serious” crime sufficient to justify involuntary medication under *Sell*);  
 27 *United States v. Jaramillo-Ayala*, 526 F. Supp. 2d 1094, 1101 (S.D. Cal. 2007) (explaining that a  
 28 violation of § 1326 is a “serious crime” for purposes of a *Sell* hearing).

1       The guideline range and maximum penalty are “not, however, the only  
 2 factor[s] that should be considered.” *Hernandez–Vasquez*, 513 F.3d at 918. The  
 3 Ninth Circuit has held that an important government interest exists where the crime  
 4 involves victims or is otherwise a crime of violence. *See, e.g., United States v.*  
 5 *Gillenwater*, 749 F.3d 1094, 1101 (9th Cir. 2014) (holding that a defendant’s threats  
 6 to choke, rape, and kill government officials and employees was sufficiently serious  
 7 to satisfy the first *Sell* factor, despite a relatively low guidelines range); *United States*  
 8 *v. Loughner*, 672 F.3d 731, 735 (9th Cir. 2012) (mass shooting resulting in the deaths  
 9 of six people was sufficiently serious under *Sell*). Courts must also look at the  
 10 “specific facts of the alleged crime as well as the defendant’s criminal history” in  
 11 evaluating the seriousness of a crime. *United States v. Onuoha*, 820 F.3d 1049, 1055  
 12 (9th Cir. 2016).

13       In this case, Defendant his charged with three crimes of violence involving  
 14 three separate victims – two first-degree murder offenses and an assault with a  
 15 dangerous weapon. Both his guideline range and the statutory minimum sentence  
 16 for these crimes is life imprisonment. Defendant also has a violent criminal history,  
 17 including a conviction for second-degree assault with a dangerous weapon and a  
 18 pending third-degree assault involving bodily harm and substantial pain. ECF No.  
 19 10. If these charges and criminal history were not enough, the specific circumstances  
 20 of the homicides are horrific. As captured on surveillance video, Defendant  
 21 slaughtered his two victims – viciously stabbing them numerous times. All of this  
 22 happened in the presence of a very young child, who was fortunate to escape with  
 23 their life by crawling out a window. It is difficult to fathom circumstances more  
 24 violent and serious than Defendant’s conduct in this case.

25       b.     There are important interests in bringing the accused to trial.

26       The government’s interest in bringing Defendant to trial is sufficiently strong  
 27 to justify involuntary medication. In examining the government’s interests, courts  
 28

1 “must consider [the] facts” and circumstances of each “individual case[.]”  
2 *Hernandez-Vasquez*, 513 F.3d at 917-18. Here the government’s interest in bringing  
3 the accused to trial two-fold: (1) ensuring the victims and their families are able to  
4 achieve justice for the loss of their loved ones; (2) the government is concerned that  
5 in the absence of treatment and without the tools available through medical  
6 intervention, Defendant will continue to harbor his delusions and will act on them in  
7 ways that may place others at risk and may result in additional victims. Moreover,  
8 as discussed in further detail below, other considerations – such as the possibility of  
9 civil confinement – do not lessen the government’s important interests in bringing  
10 Defendant to trial.

11 *Victims’ Interest:* During the pendency of this case, the victims’ families have  
12 appeared at court hearings and made clear that they want justice for their deceased  
13 family members. In this regard, 18 U.S.C. § 3771 provides that “in any court  
14 proceeding involving an offense against a crime victim, the court shall ensure that  
15 the crime victim is afforded [certain] rights.” 18 U.S.C. § 3771(b). These rights  
16 include the right to be protected from the accused, the right to attend public court  
17 proceedings, the right to be heard at sentencing, the right to reasonable restitution,  
18 and the right to be treated with fairness as well as respect, and the right for the  
19 proceedings to move forward without unreasonable delay. The United States  
20 respects these rights and submits that such rights entitle the victims and their families  
21 the ability to be heard and to seek justice for Defendant’s crimes. The administration  
22 of antipsychotic medication in this case further serves that significant interest.

23 *Safety of the community:* By proceeding to trial in this case, “the Government  
24 seeks to protect[,] through application of the criminal law[,] the basic human need  
25 for security.” *Sell*, 539 U.S. at 180. The events underlying the charges in this case  
26 demonstrate that Defendant’s conduct resulted in the most serious of crimes: The  
27 stabbing death of Defendant’s family members in the presence of a minor child.  
28

1 While the motive for these crimes is not entirely clear, Defendant demonstrates that  
2 he is a risk to the community if ever released from custody.

3 As the record in this case makes clear, Defendant suffers from a delusional  
4 disorder whereby he harbors animosity and attributes fault to those close to him –  
5 including his family, other inmates, prison personnel, and even his attorneys. As  
6 noted below, if left untreated, Defendant’s condition will only get worse. In her  
7 February 9, 2023 status report, Dr. Lloyd noted that Defendant has “repeatedly  
8 expressed paranoid beliefs that inmates and staff sexually propositioned him via  
9 their eye contact and body language.” Ex. C at 3. He similarly has written letters to  
10 FMC Butner staff expressing that the personnel want to “mentally abuse” him based  
11 of how they conduct rounds, take or provide his food tray, or look at him. *Id.* at 2.  
12 While Defendant has not yet acted on these delusions while in the controlled  
13 environment of FMC Butner, Defendant’s history indicates that he is more than  
14 capable of acting violently and harming those whom he perceives as a potential  
15 threat. In fact, Defendant himself offered up a delusional explanation for the stabbing  
16 he committed in 2013. Ex. B at 6 (“Mr. Robinson said he was convicted of second  
17 degree assault in 2013 because he ‘ended up stabbing this guy.’ He provided a  
18 delusional explanation for the assault.”).

19 Defendant’s condition will persist or even get worse if left untreated. Ex. D at  
20 5 (“Without treatment, his psychosis will worsen.”). If Defendant’s psychosis  
21 persists or worsens, it likely is only a matter of time before Defendant again acts on  
22 his delusions. Indeed, Defendant acted in an incredibly violent manner when he  
23 stabbed and killed two people and attempted to assault a third in April 2020. The  
24 underlying facts and circumstances of that stabbing demonstrate the seriousness of  
25 the crime charged and the important governmental interests in bringing the charges  
26 to a conclusion to ensure Defendant is not released into the community to harm  
27 others.  
28

1        *Additional considerations:* As part of its analysis, the Court must also  
 2 examine any “[s]pecial circumstances [that] may lessen the importance of [the  
 3 government’s] interest.” *Sell*, 539 U.S. at 179-80. “Such special circumstances  
 4 include the time a defendant has served while awaiting trial and the possibility of  
 5 future confinement.” *Hernandez-Vasquez*, 513 F.3d at 918. In this regard, the Ninth  
 6 Circuit has clarified that even when a defendant has already served more time in  
 7 custody than the minimum guideline sentence, this does not necessarily constitute a  
 8 special circumstance because “general deterrence of the serious crime at issue . . . is  
 9 also an important consideration.” *Onuoha*, 820 F.3d at 1057. That said, an interest  
 10 could be somewhat lessened if the defendant is a candidate for civil commitment.<sup>3</sup>  
 11 *Sell*, 539 U.S. at 180.

12        As set forth in *Onuoha* deterring individuals from viciously stabbing others is  
 13 an “important consideration” and further establishes an important government  
 14 interest. Defendant has been in custody in this case since April 2020. While this is  
 15 not an insignificant period of time, such confinement does not decrease the need for  
 16 prosecution in this case. Defendant faces multiple life sentences for a double murder.  
 17 The amount of time he already has spent in custody pales in comparison to the time  
 18 Defendant would face if convicted of first-degree murder. Notably, the passage of  
 19 time becomes more relevant in cases where some difficulty arises in trying “a  
 20 defendant who regains competence after years of commitment during which  
 21 memories may fade and evidence may be lost.” *Sell*, 539 U.S. at 180. There is no  
 22

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23        <sup>3</sup> The Supreme Court has explained, “[t]he potential for future [civil] confinement affects,  
 24 but does not totally undermine, the strength of the need for prosecution. At this point in the case,  
 25 there is no indication that civil commitment will occur and potentially “diminish the risks that  
 26 ordinarily attach to freeing without punishment one who has committed a serious crime.” *Sell*, 539  
 27 U.S. at 180. Additionally, civil commitment may ultimately result in Defendant’s release from  
 28 custody, which would be a miscarriage of justice in a double murder case such as this one.

1 indication here that Defendant's length of confinement would diminish memories or  
 2 that evidence is at risk of being lost. The entire crime was captured on video, which  
 3 has been preserved for trial. Accordingly, the risk of relevant evidence being lost is  
 4 minimal, even if competency restoration were to take several additional months as  
 5 Dr. Cloutier has opined. *See* Ex. D. Moreover, the time that has passed<sup>4</sup> is directly  
 6 attributable, at least in part, to Defendant, who refuses to take antipsychotic  
 7 medicine.

8 **2. Involuntary medication is substantially likely to render Defendant**  
 9 **competent to stand trial, and substantially unlikely to have side**  
 10 **effects that will interfere significantly with Defendant's ability to**  
 11 **assist counsel at trial.**

12 In the second step of the *Sell* test, the government must "make a two-part  
 13 showing to establish that involuntary medication will significantly further the  
 14 important governmental interests at stake." *Gillenwater*, 749 F.3d at 1102. To do so,  
 15 the government must first show that "administration of the drugs is substantially  
 16 likely to render the defendant competent to stand trial." *Sell*, 539 U.S. at 181, 123  
 17 S.Ct. 2174. Second, the government must demonstrate that "administration of the  
 18 drugs is substantially unlikely to have side effects that will interfere significantly  
 19 with the defendant's ability to assist counsel in conducting a trial defense." *Id.* The  
 20 court's analysis here must focus on what involuntary medication will do, not what it

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21 <sup>4</sup> With respect to the passage of time, the Ninth Circuit's decision in *United States v.*  
 22 *Steward*, 343 F. App'x 252, 254 (9th Cir. 2009) provides a good comparison. There, the defendant,  
 23 who was charged with a significantly less serious crime and spent approximately seventeen months  
 24 in pretrial detention prior to the *Sell* proceedings. *Steward*, 2009 WL 4839529 (C.D. Cal. Dec. 14,  
 25 2009). The district court held that the crime was sufficiently serious and that the government's  
 26 interest in prosecution was sufficiently important. *Id.* On appeal, the Ninth Circuit reasoned, "[T]he  
 27 amount of time [the defendant] has spent in detention does not lessen the importance of the  
 28 Government's interest in prosecution." *Steward*, 343 F. App'x at 254 (9th Cir. 2009).

1 is designed to do. *Ruiz-Gaxiola*, 623 F.3d at 696.

3 a. Likelihood of Competency Restoration

4 Under the first part of this test, the administration of antipsychotic medication  
5 is substantially likely to render Defendant competent to stand trial. In Dr. Cloutier's  
6 treatment plan, he recommends an oral administration of risperidone to treat  
7 Defendant's Delusional Disorder. Ex. D at 4. If Defendant refuses such medication  
8 orally, Dr. Cloutier recommends an intramuscular injection of immediate-acting  
9 haloperidol lactate and/or administration of longer-acting haloperidol decanoate. *Id.*  
10 Overall, the goal will be to prescribe medication at the lowest effective dose  
11 necessary to safely treat Defendant's mental illness, improve functioning, and  
12 restore competency.

13 According to both Dr. Lloyd and Dr. Cloutier, each of whom have significant  
14 industry experience, the administration of these medicines is substantially likely to  
15 render Defendant competent in this case. As Dr. Lloyd put it, "[A] substantial  
16 probability exists that Mr. Robinson's competency to stand trial can be restored with  
17 appropriate treatment with anti-psychotic medicine." Ex. B at 21. As Dr. Cloutier  
18 similarly explained, "With reasonable medical certainty, it is my clinical opinion  
19 that administration of involuntary antipsychotic medication to Mr. Edward Robinson  
20 is substantially likely to render him competent to stand trial." Ex. D at 5. These  
21 conclusions are not based on conjecture or simply the intended effects or design of  
22 such medication. Rather, as Dr. Cloutier put it, "Mr. Robinson's diagnosis of  
23 Delusional Disorder places him in a population of patients (psychosis) that is very  
24 likely to respond to antipsychotic medication and reach competency over 70-80% of  
25 the time with antipsychotic medication." Ex. D at 4. In other words, the proposed  
26 medication has proven effective for other inmates with a similar diagnosis to  
27 Defendant.  
28

Although “it is unclear what the exact percentage chance of success should be, a court in the Southern District of California has held that a 50 percent probability of success is insufficient” to demonstrate a likelihood that competency can be restored. *United States v. Jaramillo-Ayala*, 526 F. Supp. 2d 1094, 1105 (S.D. Cal. 2007). An “80 percent chance of success,” however “appears to be sufficient.” *Id.*; see also *United States v. Gomes*, 387 F.3d 157, 161-62 (2d Cir. 2004) (Affirming the district court’s finding that treatment was substantially likely to render the defendant with delusional disorder competent to stand trial, and referring to the Bureau of Prison’s 70 percent success rate in restoring defendants to competence through treatment with antipsychotic medication).

In the instant case, Dr. Cloutier’s medical opinion – i.e., that there is a 70 to 80% chance for success – is supported by the literature cited in his report. As set forth in the Report’s Appendix, “[R]ecent literature review suggests that over a 40 year period (1975-2013), using 51 competency restoration samples and pooling data . . . , the rate of restoration was 81%.” *Id.* at D at 7. Significantly, individuals suffering from delusional disorder, like Defendant, have been restored to competency more than 70 percent of the time. *Id.* These statistics are sufficient under prevailing caselaw to satisfy *Sell*. See e.g., *Gillenwater*, 749 F.3d at 1102.

#### b. Risk of Side Effects

The second consideration under this prong of the *Sell* test is the possibility that the Defendant may experience side effects that will interfere with his ability to assist counsel at trial. *Sell*, 539 U.S. at 180. Dr. Cloutier opined in this regard that based on his training and experience, the side effects from risperidone and similar medication that may be prescribed are minimal and include generally “metabolic risks such as weight gain, elevated glucose, and/or cholesterol.” Ex. D at 5. The typical side effects of haloperidol admittedly are pronounced and include extrapyramidal syndrome (EPS), which could involve “mild shaking or tremor, or

1 brief episodes of muscle tightness or spasm.” *Id.* There also is a risk, albeit very  
2 slight, that haloperidol could cause cardiac arrest. *Id.* The risks of haloperidol, of  
3 course, are mitigated if Defendant does not refuse oral administration of risperidone.  
4 *See id.*

5 To the extent haloperidol becomes necessary, the Ninth Circuit has  
6 specifically affirmed a finding that the forced administration of this medicine was  
7 “substantially likely to decrease [a defendant’s] delusional beliefs” so that he could  
8 participate in trial. *See Gillenwater*, 749 F.3d at 1102. In doing so, the Ninth Circuit  
9 pointed to evidence in the record that “several recent studies [indicate] . . . more than  
10 70% of persons suffering from delusional disorder saw an improvement in their  
11 symptoms when treated with antipsychotic medication.” *Id.* at 1103. Notably, other  
12 courts to consider haloperidol have concluded that “[t]he possibility of these side  
13 effects, while real, is not high.” *See, e.g., United States v. Villalobos*, 590 F. Supp.  
14 3d 1234, 1250 (D. Idaho 2022) (approving the use of risperidone and haloperidol to  
15 treat a defendant’s delusional mental illness in a case charging assault of a federal  
16 officer and unlawful possession of a firearm).

17 To the extent side effects, if any, occur, Dr. Cloutier’s proposed treatment  
18 plan specifies that, if needed, adjunctive treatments (anticholinergic,  
19 benzodiazepines, or mood stabilizers) can be used to manage side effects or improve  
20 Defendant’s response to treatment. Ex. D at 4. Importantly, for purposes of the *Sell*  
21 test, the possible side effects are very unlikely to interfere with the Defendant’s  
22 competency and his ability to interact with the Court. *See id.* (“[A]ntipsychotic  
23 medication to Mr. Edward Robinson is . . . substantially unlikely to interfere with  
24 his ability to assist his counsel.”).

25 In sum, involuntary medication is substantially likely to render Defendant  
26 competent to stand trial, and substantially unlikely to have side effects that will  
27 interfere significantly with Defendant’s ability to assist counsel at trial. The Court  
28

1 should therefore find the second *Sell* factor is met.

2       **3. Involuntary medication is necessary to further the government’s**  
 3       **interests, and less intrusive means are unlikely to achieve**  
 4       **substantially the same results.**

5       Under the third *Sell* factor, the Court must consider whether “any alternative,  
 6       less intrusive treatments are unlikely to achieve substantially the same results.” *Sell*,  
 7       539 U.S. at 181. In *Gillenwater*, for example, the Ninth Circuit affirmed the district  
 8       court’s decision that voluntary psychotherapy was not a viable alternative treatment  
 9       because: (1) the defendant did not realize that he had a mental disorder; and (2) the  
 10      defendant did not trust anyone, which is a major roadblock to voluntary  
 11      psychotherapy. 749 F.3d at 1104.

12      Returning to the case at hand, involuntary medication is necessary to further  
 13      the government’s interests, and less intrusive means are unlikely to achieve  
 14      substantially the same result. As set forth above, both Dr. Lloyd and Dr. Cloutier  
 15      have concluded that Defendant is not competent to stand trial, but there is a  
 16      substantial probability that the Defendant would be restored to competency with  
 17      treatment of antipsychotic medication. Ex. B at 21; Ex. D at 5. There simply are no  
 18      less intrusive treatments available that would be nearly as effective. As Dr. Lloyd  
 19      put it, “less intrusive methods of treatment, such as psychotherapy, are not likely to  
 20      restore his competence.” Ex. B at 21. Dr. Cloutier similarly has concluded, “Less  
 21      intrusive treatments are very unlikely to achieve the same results as anti-psychotic  
 22      medication.” Ex. D at 5. Indeed, as noted further in the Appendix to Dr. Cloutier’s  
 23      report,

24      There is no convincing evidence in the published literature that patients  
 25      with chronic schizophrenia or related psychotic disorders significantly  
 26      respond to psychotherapy alone compared to the response to treatment  
 27      with antipsychotic medication augmented with psychosocial  
 28      interventions. Most proponents of cognitive behaviorally oriented

1 psychotherapy for schizophrenia acknowledge the biological basis of  
2 the disorder and actively promote medication compliance.

3 Ex. D at 8 (emphasis added).

4 Significantly, like in *Gillenwater*, Defendant does not appear to believe that  
5 he has a disease, and he refused to accept treatment of any type. Ex. D at 2. This  
6 makes him unlikely and unable to effectively engage and benefit from  
7 psychotherapy without medical intervention. *See Gillenwater*, 749 F.3d at 1104. In  
8 this regard, “Multiple randomized clinical trials and follow-up studies conducted in  
9 the 1960s and 1970s found that psychotherapy alone was not sufficient treatment”  
10 for mental disorders similar to Defendant’s delusional disorder. Ex. D at 8. Rather,  
11 the majority of those patients “treated with psychotherapy alone remained seriously  
12 and chronically ill.” *Id.*

13 Defendant has stressed to his treatment providers that he does not wish to be  
14 medicated, claiming that he is concerned it will make him sleepy and/or interfere  
15 with his ability to exercise. According to defendant, “he did not want to take  
16 medication because it would cause him to oversleep and interfere with his activities,  
17 e.g., exercising, reading.” Ex. B. at 12. In his own words, Defendant further  
18 elaborated:

19 I don’t want medication. Most inmates here are either gay or bisexual,  
20 and I could end up getting raped. The medicine could cause drowsiness  
21 or cause me to sleep. It could interfere with how much I exercise – it  
22 could make breathing hard for me. It’s just what medicine do. I don’t  
23 like medicine, because I work out a lot during the day, and I don’t want  
24 it to interfere with how much I exercise.

25 Ex. B at 9-10 (typographical errors in original). These concerns, however, appear to  
26 be premised on Defendant’s delusional beliefs that he is at risk of being sexually  
27 assaulted by other inmates or the guards at FMC Butner, even though he is in a  
28 secure housing unit. Ex. B at 11. To the extent Defendant understandably is

1 concerned about side-effects, FMC Butner has made clear that such “side effects can  
2 be detected early and addressed before they become serious.” Ex. D at 6.

3 In the event that the Defense seeks a court order, backed by contempt power,  
4 requiring Defendant to accept medication – i.e., before considering the forced  
5 administration of antipsychotic medication – a court order is almost certain to delay  
6 the proceedings and unlikely to be an effective alternative to the forced  
7 administration of medicine. While a court order would be less intrusive, it likely  
8 would prove fruitless. The Appendix to Dr. Cloutier’s treatment plan specifies that  
9 contempt orders had been largely ineffective. Ex. D at 15. Of the three contempt  
10 orders issued to prisoners at FMC Butner, only one was met with success. *Id.* The  
11 refusal of the other two prisoners to follow the contempt orders led to significant  
12 delays in the court proceedings. *Id.* As Defendant has now been deemed incompetent  
13 to stand trial by four “separate physicians, and suffers from a delusory disorder that  
14 severely distorts his view of the world around him, it is unlikely that he would  
15 understand – or comply with – a contempt order from the Court.” *See Villalobos*,  
16 590 F. Supp. 3d at 1250.

17 In sum, because there is no less intrusive alternative treatment available to  
18 restore Defendant competency, involuntary medication is necessary for the  
19 government to prosecute this case. The third *Sell* Factor is therefore met.

20 **4. The administration of medicine is medically appropriate.**

21 The fourth *Sell* factor requires the proposed treatment plan to be “medically  
22 appropriate, i.e., in the patient’s best medical interest in light of his medical  
23 condition.” *Sell*, 539 U.S. at 181. When analyzing this factor, “courts must rely on  
24 the testimony of medical experts in evaluating the constitutionality of involuntary  
25 medication.” *Onuoha*, 820 F.3d at 1060.

26 Dr. Cloutier has indicated and is expected to further testify that the  
27 Defendant’s psychotic disorder causes suffering and that his disorder is treatable  
28

1 with medication. *See* Ex. D. Dr. Cloutier is further expected to testify that the  
2 administration of the medication proposed is medically appropriate without regard  
3 to the charges pending against the Defendant. Ex. D at 5. According to Dr. Cloutier,  
4 a specific treatment plan utilizing risperidone and possibly haloperidol is expected  
5 to not only improve Defendant's competency, but also decrease his symptoms of  
6 mental illness and increase Defendant's functioning. *Id.* Dr. Cloutier also has  
7 indicated that steps will be taken to administer gradually an increased dosage of  
8 medication over time to mitigate any possible risks. Ex. D at 5. On this record, the  
9 administration of drugs is medically appropriate in this case.

### 10 CONCLUSION

11 Defendant suffers from an illness that will not cease without treatment. He has  
12 committed an incredibly serious crime, and the government has an important interest  
13 in prosecution. Due to Defendant's belief that he does not have an illness, and given  
14 that he is not amenable to any treatment, involuntary medication is necessary to  
15 further the government's interest in prosecution. There is no less intrusive option  
16 that would achieve substantially the same results. Additionally, the administration  
17 of drugs is medically appropriate. The Court should therefore order the involuntary  
18 medication of Defendant to restore him to competence.

19 DATED this 27<sup>th</sup> day of February, 2023.

20  
21 Vanessa R. Waldref  
22 United States Attorney

23  
24 *s/Richard R. Barker*

25 Richard R. Barker

26 Tom Hanlon

27 Assistant United States Attorneys  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on February 27, 2023, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which will send notification of such filing to counsel of record.

*s/ Richard R. Barker*

Richard Barker

Assistant United States Attorney